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2 the same time.

3 Q. You guys were in the same police car
4 together?

5 A. Yeah.

6 Q. OK. What about Eric?

7 A. He was gone.

8 Q. The police never asked where he was?

9 A. They asked me and I said I don't know
10 the kid. They asked Taylor, and Taylor was a
11 close friend of his.

12 Q. You told the cops that you didn't
13 know but you do know him. You know what he
14 looks like, you know where he goes to school?
15 You didn't tell this to the cops, did you?

16 A. Taylor told them.

17 Q. When the cops asked you, "Do you know
18 anything about him?" You didn't tell them what
19 you knew, did you?

20 A. I said I met the kid today.

21 Q. Right. And did you tell them where
22 he went to school?

23 A. No.

24 Q. No. So you didn't tell the cops what
25 you know. You told the cops a little bit but

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2 not enough to go find him?

3 A. I didn't know what school he went to.
4 After I heard from Taylor that he goes to
5 Martin Luther King, that's when I knew it.

6 Q. He goes to Martin Luther King?

7 A. I wouldn't tell you this if I had not
8 heard it from Taylor.

9 Q. I understand.

10 A. How would I know this unless I heard
11 it?

12 Q. OK. So the kid who shot the gun went
13 to Martin Luther King? So I can go to the
14 police and in five minutes they can go and get
15 him?

16 A. If he's there.

17 Q. They'll find him. And he is going to
18 say that he is totally responsible and that you
19 guys had nothing to do with it. Is that what
20 he is going to say? Because if he is not going
21 to say that, I am better off to know now that
22 if I go to the police.

23 A. He should say that.

24 Q. Is that what happened?

25 A. That's what happened. 100 percent.

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Q. OK.

A. But they could say whatever they want.

Q. Let me ask you a question. You were playing a game and you saw where's the window?

A. In back of us.

Q. So you are sitting here and Taylor is in the middle and the window is in the back of you.

A. Yes.

Q. And you said that you saw him reach for the gun?

A. I saw the gun in his hand.

Q. OK. So I think you said you saw him reach for the gun. How did he get the gun in his hand?

A. He grabbed it from the closet.

Q. Where's the closet?

A. The TV is right there. We were sitting right there, and the closet is to the right of us.

Q. The closet is here but he is in back of you. So he goes into the closet to get the gun?

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A. Yes.

Q. Explain to me how you saw that. How did he go into the closet and get the gun?

A. He opened the door and went inside and got it.

Q. How did he know it was in there?

A. I guess one of them must have told him.

Q. Who? Don't guess, because it is kind of important, you know. It just doesn't make any sense to me and I don't know what you told the cops but we are not cops. We are not really looking for -- we are not cops.

A. I understand.

Q. But we are looking to see what happened and who's involved. Now, it doesn't make sense to me, you know, these little things. He goes into the closet, right, and the closet has a doorknob?

A. Yeah. And how they are involved.

Q. So Alex must have told him. Alex doesn't know this kid either?

A. No.

Q. I don't let strangers into my closet

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2 so, I mean, come on.

3 A. One of them must have told him before
4 I was there.

5 Q. OK. But the gun wasn't out of the
6 closet before you were there. You saw the gun
7 come out of the closet?

8 A. Yes.

9 Q. Some other questions I have for you.
10 Does Alex keep the gun loaded?

11 A. No.

12 Q. Where are the pellets?

13 A. It's in the box.

14 Q. It's in a box. And where in the
15 closet is the box? Is it on a shelf, is it
16 hidden?

17 A. As soon as you open the closet door,
18 it's right on the floor.

19 Q. Do his parents know that he has the
20 gun?

21 A. I'm not sure.

22 Q. If it's in the closet, I mean he
23 doesn't have it hanging on the wall; right?

24 A. Well, he had the rifle hanging on the
25 wall, so.

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2 Q. But his parents know he has that, but
3 do they know that about the pellet gun? Does
4 Dad know he has a pellet gun?

5 A. Now he does.

6 Q. Explain the box to me for a minute.
7 What does the box look like?

8 A. It's a slim box, about this big,
9 about like that.

10 Q. Does it have any markings on it?

11 A. Yeah.

12 Q. So what does it say on it?

13 A. Not sure. I wasn't looking at it.

14 Q. Let me ask you a question. I'm a
15 stranger, I'm clueless. I open the closet
16 door. Am I going to know, if I see this box,
17 there is a gun in the box?

18 A. Well, there is a picture of a gun on
19 the box.

20 Q. How do you load the gun with the
21 pellets?

22 A. It's in the back of the gun.

23 Q. Do the pellets come in a sealed box?

24 A. It came in a tin.

25 Q. Did you see Eric go for the pellets

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2 and take the gun and put the pellets in?

3 A. Yeah.

4 Q. So the first time you didn't see him
5 with the gun behind you. You saw him go to the
6 closet, and he had to open the closet, and what
7 happened? Explain to me what you remember in
8 your mind's eye.

9 A. I go upstairs.

10 Q. You are in the room now?

11 A. I am in the room now.

12 Q. You are sitting there playing this
13 video game. What do you see?

14 A. I see him open the door; he goes in,
15 takes the whole box.

16 Q. What was he doing before this?

17 A. Just standing by the window.

18 Q. Just looking out the window?

19 A. Yeah. Because I walk inside the room
20 and I'd seen him there. For a while he's
21 standing by the window. He comes to the door.

22 Q. The closet?

23 A. Yes, the closet.

24 Q. Alex doesn't say, "What are you doing
25 going into my closet door?"

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A. No. He takes up the whole box and places it on Alex's bed and starts loading the gun.

Q. Did you guys stop playing the game at that point?

A. No.

Q. You continued. So Alex doesn't care that some kid --

A. I am not sure if Alex -- like he concentrates, and it's hard to distract him.

Q. Simon, somebody goes into my room and I don't know that kid, first of all, he goes into a box with a gun, and I mean Alex is not concerned that this kid is now opening a box.

A. I think Alex told him that to put away the gun, but he didn't sort of force him.

Q. So Alex was aware that he had the gun before he's loaded it or after he's loaded it or while he's loading it?

A. Probably while he's loading it, while or after, I'm not too sure.

Q. But before he shot it?

A. Yeah.

Q. So now we got some problems. Joe and

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I listened to you very carefully, and we are trying to figure it out and make sense of it, and there are a few things that don't make sense to me. You can ask Joe. But, number one, since that -- so why don't you try to explain it to me.

A. Not sure.

Q. You have no idea. Did you ever see Eric leave the bedroom with the gun?

A. No. They must have played around with the gun because --

Q. Why do you say that?

A. I wouldn't know how he would know that the gun is in the closet.

Q. Who?

A. Unless they were fooling around with the gun before I got there.

Q. Right.

A. I'm not too sure, and I am not going to say something that I don't know.

Q. Did they tell you that they were doing that? Too many people we have too many people.

Simon, our incentive is not to get

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your Dad in trouble, our incentive is not to go to the cops; our incentive is to figure out why a gun was shot out of Alex's apartment, and this is a serious issue and your story doesn't jibe. If you are telling the truth, I respect that, but it seems that there is a lot of missing pieces. And if you don't want to help us, that's fine as well.

A. I want to help you as much as possible.

Q. But you are leaving out some stuff and it doesn't make any sense to me, and if you did, that's OK, but you are missing some important. Who shot the gun at the back of the building?

A. I don't know.

Q. Someone was shooting at people at the back of the building?

A. At people?

Q. Yeah. There were some guys working at the back of the building in the courtyard area.

A. I don't know.

Q. You have no idea who threw the egg

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2 out the window?

3 A. Taylor.

4 Q. Taylor threw the egg out the window?

5 A. Yes.

6 Q. Who did he throw the egg at?

7 A. He just threw it out the window.

8 Q. Why? He had nothing better to do
9 than to just throw an egg out the window? Was
10 he aiming it at somebody?

11 A. I don't think so.

12 Q. Did this happen before the gunshot in
13 the front of the building or after?

14 A. I think it was after.

15 Q. After. So after -- so is this before
16 or after Eric left?

17 A. After.

18 Q. So after Eric leaves, Taylor who is
19 playing a video game stops playing a video
20 game, he walks to the kitchen, opens the
21 refrigerator door, and chucks an egg out the
22 window. Is that what you are telling me? For
23 no reason whatsoever.

24 A. He's a wild kid.

25 Q. No, I don't believe that. He was

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2 throwing that egg at somebody. Who was he
3 throwing it at?

4 A. I just saw him throw an egg out the
5 window.

6 Q. Where is the kitchen relative to the
7 bedroom?

8 A. The kitchen is next to the back near
9 the service elevator, and right next to that is
10 another window, and the maid's room.

11 Q. Let me ask you a question.

12 A. Sure.

13 Q. You are playing a video game, you are
14 facing --

15 A. TV.

16 Q. Right. You had to see him go to the
17 kitchen.

18 A. I went with him to the kitchen to get
19 a drink from the fridge, and he takes out an
20 egg and throws it out the window.

21 Q. Simon, take ten steps back. I have a
22 guy I don't even know. He goes into the
23 closet, he takes a pellet gun, opens up a
24 window, and starts shooting. How many shots
25 did he do out the window?

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A. I think two or three. The window was already opened, by the way.

Q. OK. The window was opened. How many pellets can you get in at the same time?

A. One.

Q. One pellet at a time?

A. Yeah.

Q. So, in order to get three shots off, he would have --

A. He would have to load it three times.

Q. And he had to pump it and you saw him do go back to the bed, take a pellet, put it back in, pump it, and go back to the window, and shot it out again. Went back to the bed, put another pellet in, shot it out again?

A. Yes.

Q. And then what, just shut the window and said, "I'm leaving"?

A. He picked up Taylor's phone to call.

Q. Did he put a mask on?

A. No, there is no masks upstairs.

Q. Did you guys, prior to your Dad getting there, see any police or ambulance in front of the building?

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2 A. No.

3 Q. You had no knowledge of that?

4 A. No.

5 Q. This is important for me to
6 understand. That window that you are saying he
7 shot out of, what's outside that window? West
8 End?

9 A. Yeah, you are facing the street.

10 Q. So what was he shooting at? People?
11 I'm a little confused. How do you know he's
12 shooting at people?

13 A. Because people got injured.

14 Q. How did you know that?

15 A. The police told me.

16 Q. Did you know that when you were
17 shooting?

18 A. I just know that I heard him say once
19 that "Oh, I got someone."

20 Q. The first shot or the latter shot?

21 A. I think he said it twice.

22 Q. So you and Alex and Taylor are
23 playing games. This kid comes into the
24 apartment, walks to the closet, opens up a box
25 with a pellet gun in it, loads it with a shot,

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shoots somebody, you see him load the gun, you say Alex saw him load the gun, you saw him shoot the gun, you heard him say, "I hit somebody."

A. Yeah.

Q. Then what did you do? You did nothing, because you said he did it again.

A. Yeah.

Q. So you watched him load the gun again, you watched him point it out the window, Alex watched him point it out the window, Taylor watched him point it out the window, and you watched him shoot a second person. And then you watched him load again a third time?

A. I didn't see what he was shooting at.

Q. You heard him say, "I hit someone, I got someone"?

A. Yeah.

Q. Did you try to stop him?

A. No.

Q. And Alex didn't try and stop him?

A. Alex was just saying, "Put it away."

Q. But Alex didn't try and stop him.

Did Alex call the police?

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A. No.

Q. Did Alex call his father?

A. No.

Q. He didn't do anything. He continued playing his video game. OK. Now, you watched Taylor go to the kitchen. You go with him to get a drink. And Taylor throws an egg out the window?

A. Correct.

Q. I am going to tell you that somebody was shooting that same gun out the window at people working outside. You have no knowledge of that?

A. No knowledge.

Q. Did you see Alex walk away from the video game at any time? Did he possibly go to the refrigerator also? You didn't see that?

A. No.

Q. Well, somebody shot that gun off and we don't know who it is. Where are his parents?

A. They are both at work.

Q. What time do they get back?

A. 5 or 6.

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2 Q. And how many days a week do they
3 work?

4 A. Five.

5 Q. Five days a week. Do they work on
6 weekends?

7 A. Yeah.

8 Q. By the way, that's another
9 interesting question. When did either of his
10 parents come home? Wait. Did either of his
11 parents come home?

12 A. Yes.

13 Q. Who came home?

14 A. His father.

15 Q. And what did his father do?

16 A. His father was just in shock.

17 Q. OK. He saw you in front of the
18 building?

19 A. Yeah.

20 Q. Did his father stay with you until
21 you went to the police station?

22 A. No.

23 Q. What did his father do?

24 A. His father talked to Alex, and said,
25 "What happened?" and the cop said, 'Sir, you

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2 can't talk to him anymore' and they brought him
3 to the side.

4 Q. And then what happened? What did the
5 father do?

6 A. He went inside.

7 Q. Went inside and went back up to his
8 apartment? How long was he outside with Alex?

9 MR. LEPPER: No response.

10 Q. Did he see him again before he got to
11 the police car and left?

12 A. His father?

13 Q. Yeah.

14 A. No.

15 Q. So his father comes home, sees you
16 guys in handcuffs, a few minutes later he goes
17 upstairs and you don't see him again?

18 A. Yeah.

19 Q. When was the last time you saw his
20 father?

21 A. I have not seen his father since.

22 Q. I got another problem. You say that
23 Alex was home prior, two weeks prior?

24 A. Yes.

25 Q. People were shot two weeks prior.

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2 Weex you aware of that?

3 A. No.

4 Q. Well, now you are aware of it. OK,
5 and if you were with Alex and that gun was shot
6 up on that Monday, OK, there is a problem,
7 because people were also shot that same
8 Saturday. A dog was shot.

9 A. I know nothing about it.

10 Q. You know nothing about that. They
11 say someone was shot, and it was the same
12 direction and the same pellet was used. It had
13 to be Alex. Either Alex had to do it or it was
14 you.

15 A. It wasn't me.

16 Q. All right. Did you see Alex use that
17 gun?

18 A. No.

19 Q. So you have no knowledge of that?
20 All right. So then your knowledge, if it was
21 not you and you were with Alex during the day.

22 A. The day I was with him I did not --

23 Q. That same day --

24 A. I don't know. Unless he must have
25 did it by himself later, but I didn't witness

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2 any of us shooting the gun.

3 Q. Was the gun out that day? Did you
4 notice it out of the box?

5 A. I wasn't looking for. I'm not sure.
6 I just didn't see it outside anywhere in his
7 bedroom. I didn't go inside his closet to see
8 if it was there, no.

9 Q. You have no idea how that dog got
10 shot?

11 A. No idea.

12 Q. Did you ever shoot at a homeless
13 person?

14 A. Nope.

15 Q. You're sure?

16 MR. LEPPER: No answer.

17 Q. If that guy gave a statement also
18 that he had been shot, you would have no idea
19 how that happened?

20 A. I have no idea.

21 Q. What happened to the gun the day you
22 saw Eric shooting out the window and then you
23 said an egg thrown out the window by Taylor,
24 and then your Dad came up to the apartment that
25 day, what happened to the gun?

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2 A. Alex just placed it on the bed.

3 Q. And then what happened to the gun?

4 A. I don't know. My father came and got
5 me.

6 Q. So when you -- the gun was still in
7 the apartment?

8 A. Yeah.

9 Q. Have you seen Eric since then?

10 A. No.

11 Q. Not Eric. Alex?

12 A. No.

13 Q. You haven't been to the apartment?

14 A. No.

15 Q. By the time you got arrested, you
16 haven't seen Alex?

17 A. No.

18 Q. Did you talk to him, telephone?

19 A. I talked to him on AIM once.

20 Q. AOL. Let me ask you a question. You
21 guys got out on Tuesday. Didn't you have
22 dinner with Alex that Tuesday night?

23 A. Dinner?

24 Q. You guys went out to dinner. Didn't
25 you guys go to McDonald's or something like

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2 that?

3 A. Alex go out before me, and I left
4 with Taylor at the same time.

5 Q. Right. Later that night, this is now
6 Tuesday night?

7 A. I haven't seen Alex since when we got
8 arrested.

9 Q. You only spoke with him once?

10 A. Yeah.

11 Q. That gun should still be in the
12 closet. It should still be in the closet?

13 A. No, the police took it. I saw the
14 sergeant with it in his hands.

15 Q. I gote a problem. The story you just
16 told us is the same exact story you told the
17 police.

18 Q. Or do you have more details now? So
19 you told the police that you were aware of Eric
20 loading the gun and shooting the gun three
21 separate times and saying, "I got somebody, I
22 got somebody, I got somebody." You told the
23 police that? Are you sure you told the police
24 that?

25 A. Yes, 100 percent.

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Q. You told the police that you saw him load the gun, "I got someone." You told that to the police?

A. Yes.

Q. The police report is going to say that to us?

A. Yeah. I asked them for the statement I wrote.

Q. You have a copy of the statement you wrote?

A. Nope. The police --

Q. OK. So you told the police about Eric about where he goes to school?

A. I know where he goes to school because I heard Taylor say it.

Q. Right. But you didn't tell that to the police?

A. I wouldn't have known, because I heard it that day when the cops arrived and asked what school does he go to.

Q. So after you got out of jail, who did you talk about this situation with? I assume you talked to your Dad. Anyone else? You talked to us.

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2 A. Family.

3 Q. Other than your immediate family, who
4 else did you talk to? Did you talk to Taylor,
5 did you talk to any of your friends?

6 A. No.

7 Q. Did you have any communication,
8 e-mail, IM? You said you talked to Alex by IM.
9 What did you guys say to each other?

10 A. We didn't say anything about that
11 incident.

12 Q. I see you have a scar here. How did
13 you get that? Accident?

14 A. I was a baby and I was running with
15 my sister, we were playing tag, and I hit a
16 lady and --

17 Q. All right. I appreciate that Alex is
18 your friend, and I appreciate that you don't
19 want to say who was responsible, but we're not
20 stupid. OK. We're not stupid. You tell us
21 that you don't talk about these things, you
22 tell us that no one used a paint ball gun you
23 bought and you don't use it all. You tell us
24 that you never saw that pellet gun before. OK,
25 you can say it all you want but this is hard

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2 for me to swallow.

3 MR. COLBERT: He gives cellphone

4 number.

5 Q. If I got ahold of your cellphone bill
6 and I looked up Alex's number, I am not going
7 to see his number from after you got out of
8 jail until today?

9 A. I don't have a cellphone bill. I pay
10 monthly on a prepaid.

11 Q. If I got the cellphone records from
12 the company and I checked it out, I am not
13 going to see his number on the cellphone. I'll
14 tell you, if I had a buddy, one of the first
15 things I would do after I got out is call him
16 on the cellphone and say, "What did you say?"
17 and try and get your stories straight. I would
18 try to do that. Now tell me, did it happen
19 that way? It doesn't fit within my common
20 sense. And I've got to ask you, it makes you
21 feel that you are not telling the truth.

22 A. I am telling you guys everything.

23 Q. So if I got the telephone records
24 from the cellphone company and matched it out,
25 I am not going to see Alex's number on it?

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2 A. You are going to see that there was
3 one missed call and I didn't pick it up.

4 Q. Did Alex try and call you?

5 A. Yeah.

6 Q. OK. How about Taylor? Same thing
7 with Taylor?

8 A. Haven't spoke to Taylor.

9 Q. He's got a cellphone?

10 A. Yeah.

11 Q. What's his number?

12 A. I don't know.

13 Q. So you didn't get a call from any of
14 these guys?

15 A. No.

16 Q. Does Alex have a girlfriend?

17 A. I don't think so.

18 Q. Does he hang out with any girls,
19 boys, doesn't matter, I don't know. You got to
20 ask the right question if you want to know.

21 If my friends were shooting out of a
22 window and I'm in a room playing video games, I
23 would get up and look out the window. I think
24 everyone would get up and look out the window.

25 I think what we are trying to say,

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we're not trying to put you on the spot, your story doesn't really make any sense, that is, it's a good story, you know, but it doesn't sound like that's what really happened. It sounds like that's what you came up with in order to try and worry about the cops and not get into trouble with the cops.

MR. COLBERT: That goes on and it is a full paragraph which, in general, I don't think is relevant.

A. It's not who we are. We are really interested in and our interest only is the building that you live in and your Dad works in and, you know, he's been there for a very long time now, and these people that live in the building are very important to him and also to your family because you call that your home. And that's our only interest. Not to get you into trouble, not to get anyone arrested. It's about protecting the people that are your neighbors that make your Dad work for them. OK. Right now, Alex is a problem. You know, if you have a problem, I will tell you why, irrespective of whether or not you knew about

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2 it, what was going on. This all happened in
3 his apartment, his parents' apartment, when
4 they have him unsupervised. How many times
5 you guys hang out in this apartment
6 unsupervised? Meaning no adults around, where
7 you guys can kind of, you know, most of the
8 time?

9 A. Not all the time because he's away at
10 college.

11 Q. When he's home?

12 MR. COLBERT: It's unclear.

13 Q. When he's home and his parents are at
14 work, do you guys hang out in his place?

15 A. When he's home, it's usually on a
16 weekend and his parents are there.

17 Q. And when his parents are not there,
18 you still hang out in this place; right?

19 A. Yes.

20 Q. OK. I have a question and I won't
21 tell your father and he won't tell your father
22 either. Any drugs, alcohol?

23 A. Nothing.

24 Q. Nothing? Alex?

25 A. Nothing that I've seen.

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Q. Does he talk to you about it? He should be a lawyer, I swear, "Nothing that I saw." He's very careful. What do you know?

A. He said he done something before but I wasn't -- unclear. I know he doesn't do drugs.

Q. What? Coke? Speed? The apartment?

A. No.

Q. Where did he get the weed?

A. At school.

Q. College?

A. No, high school. He said he did it once and never did it again. And I know that I am trying to pin this all on Eric, that's what you guys are thinking, but I am just saying it so I won't get in trouble, because I didn't do anything. Because it seems like I am getting in trouble and I'm just trying to pin some random kid.

MR. COLBERT: It's Joe speaking here:

Q. All right, so we are not saying that we are eager to look perfect, but we got a job to do and what I'm telling you right now is, I need to know, OK, did Alex shoot that gun?

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2 A. No.

3 Q. But he was aware that it was being
4 shot? Are you protecting Alex right now?

5 A. No.

6 Q. Did Alex have a problem? OK. Get
7 off the incident for a second. Just forget
8 about the incident right now. To me, you
9 probably knew what was going on, you let the
10 guy in, it was in his closet. You obviously
11 told him that there was a gun in the closet.
12 This kid didn't know innocently to walk over to
13 the closet, find a box, and open it up and find
14 the gun; right?

15 A. Yeah.

16 Q. So you told him the gun was there?

17 A. Not in my presence. As soon as I got
18 there, I saw a gun.

19 Q. Yeah, the gun wasn't out yet. You
20 saw him go to the closet and get the gun out?

21 A. Yes.

22 Q. So it was obviously talked about?

23 A. One of them must have told him.

24 Q. OK. And you didn't say to Alex,
25 "Alex, how did he know to get the gun?" You

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2 didn't say that, never crossed your mind?

3 A. If I'm not doing something that is
4 not allowed to be done, then I don't really
5 care.

6 Q. Let me ask you a question. Do you
7 think watching someone shooting a gun at people
8 is not bad?

9 A. Yeah.

10 Q. No, no, no.. Answer that question as
11 asked to you. Do you think watching someone
12 else shoot someone with a gun is not bad?

13 A. Yeah, it's very bad.

14 Q. It's very bad. So you think it's
15 very bad?

16 A. Sure.

17 Q. So you think that as long as the next
18 guy is doing it, but you are not actually doing
19 it, it's not so bad?

20 A. But as long as I'm not doing it I
21 really don't care.

22 Q. You don't care. So you didn't care
23 that this kid was shooting other people. You
24 didn't care about that? Not your problem.

25 A. Not my problem.

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2 Q. You didn't care that two people got
3 taken away, that one person got taken away --
4 that wasn't your problem either. And if a dog
5 got shot, you didn't care about that either,
6 did you? You don't care. That's what your
7 testimony is right now. That's what you are
8 saying to us. You don't care.

9 A. If I don't do the crime, I don't
10 care.

11 Q. OK. And if you are aware and you try
12 and stop it, you don't care whether it goes on
13 or not? You wouldn't even try to stop it?
14 It's a yes-or-no question. Answer is no, you
15 would care?

16 A. I would get back to the people.

17 Q. But you wouldn't care? Why wouldn't
18 you care? I'm being very honest with you, I'd
19 feel terrible. I shot a bird with a BB gun and
20 I was crying for two weeks. Stupid. How come
21 you don't care? How do you not care?

22 A. If I'm not doing it, it's not my
23 problem.

24 Q. Did you do anything different that
25 day?

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2 A. What?

3 Q. If you had to do it all over again,
4 would you have done anything different?

5 A. I wouldn't have gone up.

6 Q. If you went up and what was going on
7 was going on, and you saw this guy grab the
8 pellet gun and shot someone, would you have
9 done the same thing?

10 A. Now I would stop it.

11 Q. Why?

12 A. To avoid all this problem, all the
13 nonsense.

14 Q. All the nonsense. What's the
15 nonsense?

16 A. This kid acting a fool.

17 Q. You mean the hassle that was created?

18 A. Yeah.

19 Q. That would be your reason for
20 stopping it, because it's a pain in your neck?

21 A. Yes.

22 Q. Is there any other reason you would
23 try and stop it?

24 A. No.

25 Q. That's it? Simon, other than --

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2 getting away from the incident right now -- you
3 know Jack asked you about some of the other
4 things that Alex, you know, has done. What
5 else is there that we don't know about? I know
6 that there's stuff. Talk to me about the
7 fireworks in the basement.

8 A. I heard that -- I was in Albania with
9 my Dad -- that was the summer; right?

10 Q. Yes. OK, what did you hear?

11 A. I heard from a couple of doormen that
12 Alex went crazy and did fireworks in the
13 basement.

14 Q. Yeah, and you never asked Alex about
15 that? I don't believe you. Look at me.
16 You're lying to me.

17 A. I'm not sure.

18 Q. Yes, you are. Look at me. This is
19 your closest friend, OK, and I've had close
20 friends also, all right, and some crazy doorman
21 tells me that my closest friend lit fireworks
22 off in the basement and he got in trouble for
23 it. You don't think I'm asking my friend about
24 it? The answer is, of course I am. So don't
25 tell me you didn't ask him about it, because

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2 you did. All right, you don't want to get in
3 trouble, OK. Just say, "Jack, I don't want to
4 get my friend in trouble. Just don't go any
5 further with this." That's an honest answer,
6 but don't tell me you didn't know.

7 A. That's an answer that saying --

8 Q. It's not saying, saying I don't want
9 to answer the question.

10 A. I'm not going to answer the question.

11 Q. OK, that's an honest answer. Do
12 yourself a favor and just be honest. I know
13 you talked to him about it because he's your
14 closest friend and you would have talked to him
15 about it. And I will tell you something else.
16 We're not -- this is informal. If you are on a
17 witness stand in front of a judge and you lie,
18 it is called contempt of court. You're an
19 adult now. It is a very, very serious thing.

20 A. I know.

21 Q. OK. So what you get away with here
22 you can't get away with in front of a judge or
23 you really risk a lot of trouble for yourself.
24 And you have indicated a problem for us. Let
25 me tell you what the problem is for me now.

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2 MR. LEPPER: And then it goes on. He
3 says:

4 Q. If I have to put you before a judge
5 and put you in a position where you don't tell
6 me the truth, we have real consequences. Then
7 I got to do what I got to do.

8 A. It's nothing but the truth.

9 Q. The truth is, Alex talked to you
10 about the fireworks in the basement, didn't he?
11 That's the truth.

12 A. No.

13 Q. You didn't talk to him or are you not
14 going to tell me?

15 A. I didn't ask him.

16 Q. I didn't ask if you asked him. He
17 told you that he was being hassled by the
18 doorman over the fireworks in the basement,
19 didn't he?

20 A. He told me that, yeah, the doorman
21 said that he was doing it and he was trying to
22 make a big deal.

23 Q. And it was really no big deal. Is
24 that what he said to you, it was really no big
25 deal? That's what Alex told you, the doorman

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2 is making a big deal out of nothing?

3 A. No, no, he didn't say that. He said
4 the doorman is trying to blame me for something
5 and he's making such a big deal.

6 Q. Right.

7 A. And I didn't do it.

8 Q. Yeah, and when did he say that?

9 A. When I got back from Albania.

10 Q. Right. And he told you that he
11 didn't do it?

12 A. He told me that he did not do it.

13 Q. Well, the first thing you told me was
14 that he never discussed it with you. Now you
15 told me that when you got back from Albania,
16 that he talked to you about it?

17 A. That he didn't do it. He told me
18 that he didn't do it. I don't know whether he
19 did or didn't.

20 Q. And what about throwing things out
21 his window, like wet toilet paper? What can
22 you tell me about that?

23 A. I've seen him throw wet toilet paper
24 out the back window.

25 Q. You've seen him throw wet toilet

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2 paper out the back window. What's he throwing
3 it at?

4 MR. LEPPER: Unclear.

5 Q. In other words, I'm playing my video
6 games, I'm having my doughnut and milk, OK, I'm
7 kissing my parents goodbye, and like a half an
8 hour later I'm bored, so I take some toilet
9 paper, make it wet, and throw it out a window?
10 Is that what he was doing, or aiming it at
11 somebody?

12 A. He wasn't aiming.

13 Q. So he just threw wet toilet paper out
14 a window. What was the purpose? Explain to me
15 what possible purpose there could be for doing
16 this?

17 A. To watch what would happen.

18 Q. What could possibly happen to wet
19 toilet paper? It's not dry, so it's not going
20 to unfold. It's just going to fall. What are
21 you guys going to explode?

22 A. Go everywhere.

23 Q. Go everywhere. And do what?

24 A. Make a mess?

25 Q. Who's responsible for cleaning the

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2 mess? At that particular building, who's
3 responsible for taking care of the grounds and
4 the facility?

5 MR. LEPPER: Silent.

6 Q. Right. Now, was Alex trying to
7 punish your Dad?

8 A. No.

9 Q. With Alex -- [unclear] -- your Dad?

10 A. Yes.

11 Q. OK. So Alex -- something -- your
12 Dad?

13 A. Yeah.

14 Q. So Alex doesn't like Ruben? Alex
15 doesn't like Ruben, does he?

16 A. Not sure. You have to ask him.

17 Q. What do you think?

18 A. Yeah.

19 Q. Yeah, he doesn't like him?

20 A. He likes him.

21 Q. He likes him? So why did he want
22 Ruben to clean up the outside if he liked him
23 so much?

24 A. Because he doesn't think.

25 Q. Doesn't think what? He knew who

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2 would have to clean it up, didn't he?

3 A. Obviously.

4 Q. Did your Dad clean it up?

5 A. Not sure.

6 Q. Who cleaned up the toilet paper?

7 Should I get your Dad on the phone right now

8 and ask him? Would that help? Ruben had to

9 clean it up.

10 MR. LEPPER: The answer is unclear on

11 tape.

12 Q. Right. So Alex doesnt like Ruben so

13 much. Just answer the question honestly. You

14 know what, you got to, once in a while, be up

15 front with us.

16 A. I'm up front.

17 Q. You're not being up front because --

18 is it possible he didn't like him?

19 A. Maybe.

20 Q. What was his problem with him?

21 A. I don't think there is a problem. I

22 just think he does a lot of stupid stuff.

23 Q. Throwing toilet paper out to make

24 Ruben clean it up is a stupid thing?

25 A. It's stupid he threw it out a window,

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2 yeah.

3 Q. What would make him do that? Just to
4 give someone a hassle?

5 A. I guess to have fun.

6 Q. To have fun. Carving things into a
7 locker, specifically a swastika. Why would he
8 do that?

9 A. I have no idea.

10 Q. You have no idea why he would carve a
11 swastika. Did you ever talk to him about it?
12 What's a swastika?

13 A. A swastika?

14 Q. Yeah.

15 A. Nazi symbol.

16 Q. Right. And how does Alex even know
17 what that is?

18 A. Who doesn't know what that is.

19 Q. But how do you know what it is?

20 A. School?

21 Q. From school? And you and Alex ever
22 talk about it?

23 MR. LEPPER: Silent.

24 Q. And what made Alex decide to do that?

25 A. Well, if he did do it.

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Q. He did do it because his parents have now paid for it to get repaired, so don't tell me if he did do it. He did it. The question is, what possessed him to do it?

A. You mean, whose locker was it on?

Q. You know whose locker it was on?

A. Something -- with the Jews.

Q. Right.

A. I guess to play a joke on him.

Q. Why was he playing a joke on a Jew? What was the joke? What's funny about it?

A. It's not funny. I don't know.

Q. Why Drew? Why did he choose Drew?

A. I guess because he's Jewish.

Q. So you think Alex chose Drew because he's Jewish and put a swastika there?

Let me ask you a question. OK, do you think there are any other Jewish people in that building?

A. Of course.

Q. Do you feel good about that?

A. No.

Q. Why?

A. Because it's offensive.

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2 Q. OK. Did you tell your Dad when Alex
3 did that, that he did it?

4 A. No. Because I wasn't with him. I am
5 not going to blame someone if I don't know.

6 Q. OK. Let's assume that Alex did that
7 and you knew about, you found out after the
8 fact, he told you after the fact, would you
9 care about it or is this also not your problem?

10 A. Well, if I saw him do it, I would say
11 he did it.

12 Q. OK. But also not your problem
13 because you didn't do it?

14 A. If I don't do it, no.

15 Q. So when Alex talked to you about, you
16 know what? Not my problem.

17 A. I was never with him when stuff would
18 happen.

19 Q. You talk about it. You say, "Alex,
20 why are you putting swastikas on people's
21 lockers? Alex, why are you setting off
22 fireworks?"

23 A. Do you ever talk to the guy?

24 Q. It might be that you are having fun
25 with him.

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2 The doors in the building were
3 painted into a different color? He made some
4 carvings. He painted the doors downstairs.

5 A. He didn't paint anything. I heard he
6 carved something in the elevator door.

7 Q. Yeah, why do that? I mean, this is
8 your Dad's building. Your Dad busts his ass to
9 keep the building --

10 A. I understand.

11 Q. So why is he punishing his closest
12 friend? Why is he doing this to you?

13 A. He's trying --

14 Q. I don't care what you think he is
15 trying, you know wht he's doing. Why is he
16 doing it?

17 A. I don't think it's cute.

18 Q. Why does he keep punishing your Dad,
19 to put your Dad through this?

20 A. He's not trying to punish anyone in
21 the building. I guess he's trying to have fun
22 or do something.

23 Q. What do you mean? He's got you as a
24 friend. So why is he doing this stuff? What's
25 behind it? Did you ever get into a fight?

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A. Me?

Q. No, him. Let's go back -- [unclear].
Why is he getting off? What's the turn-on for
this? Why does he do this stuff?

A. Because he has nothing better to do.

Q. Did he ever have a job? Did he ever
work any place?

A. Yeah.

Q. Where did he work?

A. I think a messenger.

Q. A messenger? How long did he have
the job for?

A. Just for the summer.

Q. Last summer?

A. Maybe two summers ago.

Q. He's never had a job otherwise? How
long did he have the job for?

A. The whole summer.

Q. The whole summer. He had to work
otherwise. Talk to me about a little laser
beam. What's that about?

A. I think he had a laser beam.

Q. What color is the beam?

A. Red.

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Q. And what did he do with it? And don't tell me you don't know because I know you know and I know all about it.

A. Point it out the window.

Q. At? Who's he pointing it at?

A. Anything.

Q. People too?

A. Yeah.

Q. Let me ask you a question now. It's late at night, we live in a crazy world and do stupid things and you're walking and you see a little laser beam dot on your chest. How do you think a person feels about that?

A. Not so good.

Q. Not so good. What else do you think they are thinking about? What are they worried about?

A. A gun?

Q. A gun. OK. Did you ever point that laser beam at anybody?

A. No.

Q. Did your witness Alex do it?

A. I saw him do it once.

Q. OK, you saw him do it at least once.

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Did you say anything to him? Did you ask him why he was doing it?

A. No.

Q. No. No to both questions. So Alex is pointing out the window, but it was Eric who did all the shooting? Right. You know that we don't buy that. And you know that the other kid wasn't there two weeks prior but you were. So if you are telling me that it's always Alex who does this stuff, it's not you.

A. I'm not saying it's always Alex. It's just -- I'm saying that you guys always blame Alex.

Q. You're telling us that Alex does this stuff.

A. No, I'm telling that I hear from people.

Q. You also saw Alex throw toilet paper out the window, you also saw him put the beam on people's chest; you also, because he was there as well, saw someone load his gun, shoot it, load it, and he was there and you did nothing to stop it. I've got to tell you, if one of my friends shot my gun at somebody, I

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2 would have killed him. I would have grabbed
3 my friend. I would have told my parent
4 immediately. But you didn't do that.

5 A. It was in my apartment, I wouldn't
6 have a choice.

7 Q. But you didn't do that?

8 A. I know, I understand.

9 Q. So you would have behaved differently
10 from Alex, you would stop somebody but --

11 A. If it was my apartment, yes.

12 Q. You would have stopped it. OK. But
13 you didn't.

14 A. It's not my apartment.

15 Q. So it's OK to do it in Alex's
16 apartment, but not to do the kind of things, so
17 things you do in Alex's apartment you can't do
18 your apartment?

19 A. In Alex's apartment, it's his choice
20 because it's not my place to say something.

21 Q. Right.

22 Q. He's the owner of the place. I'm not
23 going to tell the owner of the place what to
24 do.

25 Q. All right. So no matter what goes on

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2 in Alex's apartment, if you are there, it's not
3 your problem, as long as you are not doing it.

4 Is that yes? I can't hear you say yes.

5 A. Yes.

6 Q. OK. I know that you are here on your
7 own time.

8 A. I don't mind, but --

9 Q. You think this is a waste of time?

10 A. My time.

11 Q. Well, you know what? What you now
12 told me is that some kid, while you were there,
13 took a gun, shot at somebody, told you about
14 it, and you watched him do it a couple more
15 times. You know what? I don't know if
16 everyone knows that. I'm not sure if that's
17 exactly what you told everybody.

18 A. You could ask.

19 Q. I know I could ask. I also know that
20 you live at the building. You are not the
21 owner of the building?

22 A. I know.

23 Q. Other people own that building.

24 A. I know.

25 Q. And they are going to be very

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2 concerned about a lot of these things.

3 A. I know.

4 Q. Do you still have your paint ball
5 gun?

6 A. Yeah.

7 Q. Does your Dad know that you have a
8 paint ball gun?

9 A. I'm not sure. I keep it on the side
10 of my bed. You can't see it when you walk in
11 the room.

12 MR. LEPPER: We asked for a
13 cellphone number.

14 Q. Do you use his cellphone often?

15 A. No.

16 Q. Alex didn't call you. What do you
17 think your --

18 A. I was just caught in a bad spot.

19 Q. Does your Dad punish you?

20 A. They understand that I didn't do
21 anything.

22 Q. You told your Dad everything you
23 know? And you didn't receive any punishment?

24 A. Why would you get punished if you
25 didn't do anything?

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2 Q. You don't think you did anything
3 wrong? Shoot a gun out of the window?

4 A. I told him that I saw him with the
5 gun and he was the one who did the shooting.

6 Q. Let me ask you a question.

7 A. Sure.

8 Q. This Eric, how big is he, how tall is
9 Eric?

10 A. About five ten.

11 Q. About five ten, OK. And how much do
12 you think Eric weighs?

13 A. About 140 to 150 probably.

14 Q. Is he physically intimidating to you?

15 A. No.

16 Q. Do you think he could handle you? Do
17 you think you could handle him? You're a guy,
18 so Most guys look at each other and say, "Yeah,
19 I could deal with that guy" or "I can't deal
20 with that guy." So I'm asking you right now,
21 can you handle that guy or not? We're all
22 egomaniacs.

23 A. I can handle anyone.

24 Q. You can handle anyone. So you're
25 afraid of Eric. If you wanted Eric to stop --

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A. I'm not afraid of anyone.

Q. So if you wanted Eric to stop doing what he was doing, you could have stopped him from doing what he was doing?

A. Of course.

Q. Particularly if you and Eric are together. The truth of the matter is you had no problem with what he was doing; right? You had no problem with what he was doing; right? You had no problem with it. OK, and Alex had no problem with what he was doing?

A. I guess not.

Q. Did you congratulate him when he hit somebody?

A. No.

Q. Did you say "Good shot"?

A. No.

Q. No. Did anyone else take a try?

A. No.

Q. Was he the lucky winner of the three? Did he have the best shot because he hit somebody? Is that really what happened? That he just hit someone, the other guy didn't hit someone? The other guys didn't hit anybody?

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2 A. No.

3 Q. No.

4 Q. He took a shot and he was the only
5 one I'd seen shot.

6 Q. He was the only one you saw. Did you
7 hear anyone shoot?

8 A. Nope.

9 Q. But you are not sure? You're really
10 not sure.

11 A. I'm positive.

12 Q. That was the only one who shot that
13 gun?

14 A. No.

15 Q. Did he point the gun at you?

16 A. No.

17 Q. Did he point the gun at anyone in the
18 room?

19 A. No.

20 Q. Hold it up?

21 A. No.

22 MR. COLBERT: Then we asked for a My
23 Space page account. He tells us what his My
24 Space account is.

25 Q. You told me that you didn't -- five

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2 minutes later you explain that -- something.

3 A. I didn't explain; I just told you
4 yes, if he has it outside the apartment.

5 Q. You told me that you never saw any
6 knife whatsoever and then you said --

7 A. I told you about the laser pointer.
8 I'm telling you everything I know.

9 Q. But you are not telling me that he
10 shot the gun two weeks before.

11 A. I'm not going to tell you lies.

12 Q. Alex never discussed --

13 MR. LEPPER: That's it.

14 MR. COLBERT: I need a break. I
15 think we all need a break.

16 MR. ENGELSTEIN: And food. I'm
17 serious.

18 MR. COLBERT: We'll take five to ten
19 minutes at once.

20 MR. LEPPER: We will take fifteen to
21 twenty minutes.

22 MR. SOMERSTEIN: We will go into the
23 other conference room.

24 (A recess was taken at 7:22 p.m.)

25 (At 8 p.m.):)

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2 MR. COLBERT: Can we go back on the
3 record? Did everybody enjoy dinner or
4 whatever?

5 A few things, and then we are going
6 to end up, turning the meeting over to you.

7 Just so the record reflects, we
8 marked as Exhibit 10 the transcription by the
9 secretary of the tapes of our discussions with
10 Simon.

11 (Transcript of interview of Simon
12 Camaj marked Exhibit 10 for identification.)

13 The proprietary lease and bylaws we
14 previously provided to Mr. Somerstein, so we
15 are not going to mark them or provide them.
16 You have them, right, Mr. Somerstein?

17 MR. SOMERSTEIN: We acknowledge them,
18 and we have reviewed them, yes.

19 MR. COLBERT: The only other letter I
20 want to read right now is Mr. Harvey's May 17
21 letter. The Board was privy to this, but I
22 think it is important to just read it again
23 because it was back in May of 2007.

24 MR. SOMERSTEIN: This is exhibit
25 number?

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2 MR. COLBERT: 5. And this is to Jack
3 Lepper from Mr. Harvey, and it came after a
4 meeting that Mr. Harvey had with Mr. Lepper.
5 Mr. Lepper asked him to memorialize it in a
6 writing and this is what he wrote:

7 "This is to confirm to you in writing
8 the information I gave you yesterday concerning
9 my son's arrest on May 7, 2007, and how it
10 relates to the building. Since I was not
11 there, most of the information I have is
12 secondhand, but I am happy to relate to you
13 what I have either learned or been told.

14 "Alex is a freshman at UMass Amherst.
15 When his Monday classes were canceled, he came
16 home for an informal long weekend. According
17 to Alex, on Monday afternoon he, Simon Camaj,
18 and a young man named Taylor decided to play
19 video games in Alex's bedroom in our apartment.
20 Alex and Simon have known each other all of
21 their lives. Taylor was someone my son met
22 several months ago. Alex thought Taylor was
23 nice enough and they had a mild social
24 acquaintance. I understand that Simon and
25 Taylor went to the same high school; whether or

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2 not they knew each other very well or at all, I
3 do not know.

4 "Taylor unexpectedly brought with him
5 someone named Eric who neither Alex nor Simon
6 had ever met.

7 "At sometime in the afternoon Eric
8 stopped playing video games while the other
9 three continued. According to Alex, all three
10 were completely unaware that Eric had taken a
11 BB gun, which Alex used for target practice and
12 which was sitting on a shelf in his room, and
13 was shooting it out the bedroom window.

14 "Upon learning that Eric had done
15 this, he was ordered to leave, which he did. A
16 short time later, at approximately 5:30, Alex
17 packed his schoolbooks and left for Port
18 Authority to take a 6:15 bus back to UMass.

19 "I arrived home at 6 p.m. and saw
20 Alex standing with a policeman outside our
21 building in handcuffs. The policeman,
22 Patrolman Lopez, stated that a pedestrian had
23 been hit by a BB but that Alex most likely
24 would not be arrested since it appeared that he
25 was not involved in the shooting. Later, when

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2 Alex, Simon and Taylor were arrested, I was
3 informed by Patrolman Lopez that it was only
4 because Eric could not be found.

5 "Alex told me that he was
6 interrogated for well over an hour. He further
7 understood that the other two boys were
8 interrogated similarly. Alex insists, and
9 apparently the other boys have agreed in
10 separate statements, that Eric was the only
11 shooter and that they did not know what he was
12 doing. They claim that the games that they
13 were playing were very loud and so intense that
14 they completely lost track of him.

15 "Alex was not charged with anything
16 other than possession of a BB gun, which
17 apparently is rarely charged in New York City.
18 He was released without bail. Steve
19 Somerstein, a friend who is representing Alex,
20 feels that the BB possession charge will be
21 reduced but only time will tell."

22 The other thing that I wanted to read
23 to the Board -- do you want to add anything?

24 MR. LEPPER: Yes. Let me have
25 Exhibit 3, your letter, Joe, to Steve.

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2 I just think, in fairness to
3 everybody, everyone should know that I did
4 speak to the lawyer regarding the locker
5 incident and the lock, and there was a
6 discussion as to whether that was a major deal.
7 It was explained to me that the lock itself was
8 a \$5 lock, and that Mr. Harvey agreed to
9 replace the \$5 lock, and to be practical and
10 honest about it, it might be easier to replace
11 the \$5 lock than discuss it any further. I
12 think it is in fairness to Mr. Harvey to bring
13 that out. It was a question about how the
14 locker got damaged.

15 I also want to mention to the Board
16 that we spoke to Drew, whose last name is
17 Turner, Drew Turner. Drew said a few things to
18 us. One, he discussed that there was an issue
19 where his name Drewsco was used, was carved in
20 various areas of the building on doors. But he
21 didn't know if that was a response, as it
22 happened the day after he had hung a picture of
23 Alex, I guess, in a public place in the
24 building, where he suggested that he did it as
25 a practical joke, and that Alex had suggested

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to him that he thought his name was up on the door of public places to see what happens.

Drewsco was carved in various places in the building. He approached Alex and explained how that was a terrible thing to do, and Alex went and got paint and painted over the locks, the doors, and he got paint all over him and painted it the different colors of the doors.

That was our understanding of that incident.

Drew also acknowledged that he and Pellumb had witnessed Alex receive a package, I think UPS kind of delivery, that Alex chose to open in a public area, and it had these wicks that they saw out of the box. I believe it was the next day or within the next couple of days that the burn marks were found on the basement floor and we were told that as well. I am saying this so that, Steve, you are aware of these things and you can respond to them.

I want to be clear that what Pellumb said was that Alex showed his knife, but not necessarily try to attack him with his knife; that the knife was just made visible to him and made him uncomfortable. But he never

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2 threatened to stab anybody or necessarily use
3 it. It was shown. I think that that should be
4 said as well.

5 I think the My Space page that you
6 have is referenced in the Harvey letter that we
7 received, I guess last night, and so it speaks
8 for itself, but we were bothered that we see
9 that, among other things, the "Cap homeless
10 people" --

11 MR. SOMERSTEIN: Wait a minute, wait
12 a minute.

13 MR. LEPPER: You can say anything you
14 want to say.

15 MR. SOMERSTEIN: I want to say that
16 your opinion and editorializing about it, that
17 you were bothered, I think is inappropriate.

18 MR. LEPPER: OK.

19 MR. COLBERT: Actually, I think, just
20 so the record is clear, the My Space page says
21 "Caps homeless people for fun."

22 Before I turn the floor over to you,
23 I just want to say, because I didn't read it
24 into the transcript -- because we assumed it
25 was made part of the record by referring to it

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2 as an exhibit -- just what the provision is
3 that we are talking about in the lease that the
4 Board, after you hear them, will deliberate
5 upon. This is what the provision says. It is
6 paragraph 31 of the lease, which says:

7 "If upon, or at any time after, the
8 happening of any of the events mentioned in
9 subdivisions (a) to (j) inclusive of this
10 paragraph 31, the lessor shall give to the
11 lessee a notice stating that the term hereof
12 will expire on a date at least five days
13 thereafter, the term of this lease shall expire
14 on the date fixed in such notice."

15 Then it goes on to say in paragraph
16 (f) under "Lessee's Objectionable Conduct,"
17 which is included as a paragraph in paragraphs
18 (a) to (j):

19 "(f) If at any time the lessor shall
20 determine, upon the affirmative vote of
21 two-thirds of its then Board of Directors, at a
22 meeting duly called for that purpose, that
23 because of objectionable conduct on the part of
24 the lessee, or of a person dwelling or visiting
25 the apartment, repeated after written notice

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from lessor, the tenancy of the lessee is undesirable; (it being understood, without limiting the generality of the foregoing, that repeatedly to violate or disregard the House Rules hereto attached or hereafter established in accordance with the provisions of this lease, or to permit or tolerate a person of dissolute, loose, or immoral character to enter or remain in the building or the apartment, shall be deemed to be objectionable conduct)."

I think that what has been presented is what we are aware of, and I think that now it is in the record. This is your opportunity to speak to the Board, present what you like to the Board. We may consider bringing some other things in before the conclusion of the meeting. We will turn it over to you now.

MR. SOMERSTEIN: Thank you. As I said before, my name is Stephen Somerstein. I am representing Mr. Harvey and Ms. Wilhelm, and I also represent Alex, in connection with this whole thing.

A couple of things I want to say preliminarily, though. We went to court this

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2 morning to try to get an injunction to stop
3 this meeting from taking place tonight.

4 I just want to be clear: We didn't
5 do that to put ourselves in an adversarial
6 position with you members of the Board, pulling
7 fancy lawyer tricks.

8 There is a lot at stake here. Frank
9 and Jean's home is at stake here. As you all
10 know, they have been there for 20 years. They
11 have a lot of equity in the place. The expense
12 of having to relocate involuntarily is going to
13 be enormous, and the humiliation of being
14 evicted from a building that is alleged to be
15 objectionable is going to be terrible. Their
16 ability to find a new home in New York in
17 another co-op will be severely impaired if this
18 is ever acted on adversely by the Board. The
19 chances of succeeding, in coming to another
20 Board, will prove slim to none.

21 We were in court this morning. I had
22 written a very extensive letter to your counsel
23 asking for information -- I don't know if any
24 of you saw that or were consulted on that --
25 but I had written a very extensive letter

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asking for an outline of what the procedure would be, what the witnesses would be here, so that we can ask questions or even cross-examine to test their veracity and credibility. I would love to get Simon as a witness so I can subject him to cross-examination so we can get to the truth of what he really meant and how he was interrogated.

We never got any of this information from your counsel. For whatever reason, they decided not to provide us with any details of the allegations, of the evidence we might have had. We never saw this affidavit that has been marked as an exhibit, Exhibit 7. We never saw the Pellumb affidavit. We never saw the incident report from Thomas Moore. I would have loved the opportunity to interview Thomas Moore about what he had to say before this meeting so we could properly respond to that. I would have loved to have talked to Pellumb about his affidavit and what he had to say.

This transcript that was just read was very voluminous. I had no idea this transcript existed before this very moment.

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2 And I would have loved, I think it would have
3 been fair, for us to have that so we could
4 examine it, analyze it, and see where the story
5 hung together, where it didn't hang together,
6 and prepare a response.

7 So, for all those reasons, we thought
8 with so much at stake that we needed more time
9 to prepare for this and that we should have had
10 more notice of some of the evidence and some of
11 the information.

12 The Court saw fit not to grant that.
13 As you know, co-op boards have very great
14 discretion. Courts are reluctant to interfere
15 with your discretion and your decision, how you
16 conduct the affairs of the Board, but we
17 thought we would make our best attempt at
18 getting this. We felt we needed it. The Court
19 wouldn't do it.

20 My first request to you now is for
21 you to do it, to give us an adjournment of this
22 meeting, now that we have heard everything, and
23 give us a chance to go back and prepare, to
24 respond to some of this stuff.

25 It is going to be very hard now to do

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2 this on the fly and on the run. I know it is
3 not a trial; I know we are not entitled to a
4 trial here. The procedure is what the Board
5 says is the procedure. That is their
6 discretion. But the Board also has, I hate to
7 use lawyer words, but a fiduciary obligation to
8 every shareholder, not only the shareholders
9 that need to be protected -- and that's
10 proper -- but a fiduciary duty to shareholders
11 who are facing accusations. You know, there is
12 a fiduciary duty of fairness here, to give
13 Mr. Harvey and Ms. Wilhelm a chance to defend
14 themselves and in a fair way.

15 So my first request, and I don't know
16 who is Chairman of the Board --

17 MR. COLBERT: You can make your
18 request, and I think you just did. So why
19 don't you --

20 MR. SOMERSTEIN: No, excuse me. I
21 would like to make a request to the Chairman of
22 the Board. Who is the Chairman of the Board?

23 MR. LEPPER: Right now it is us.
24 What you are requesting, Steve, is that --

25 MR. SOMERSTEIN: I am requesting a

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2 vote on my request for adjournment.

3 MR. LEPPER: That is not going to
4 happen here with you and your clients present.

5 MR. SOMERSTEIN: We will step out.

6 MR. LEPPER: Do you want to step out
7 for the Board to discuss it and respond?

8 MR. COLBERT: Just so the record is
9 clear and they hear both sides of the story,
10 one of the things that the Judge did say that
11 was missing from your papers was: Well, what
12 does Alex have to say about all this? Where is
13 his affidavit in all this?

14 MR. SOMERSTEIN: But that is --

15 MR. COLBERT: Let me finish. Alex is
16 sitting here and what you are saying is you
17 need time to prepare a defense. This is not
18 what this meeting is really about. Alex is
19 here. My question to you is, for you to
20 consider and for them to consider, Alex is here
21 and most of this has to do with things that he
22 knows about and that he can talk about. And I
23 am not sure why he can't talk about it today.

24 MR. SOMERSTEIN: Alex has denied the
25 allegations, he will deny the allegations, but

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we are hearing for the first time things about masks, about people wearing bullets on their belt; we are hearing about incidents that he has no knowledge of. We are hearing many, many things here for the first time that Alex has no knowledge of.

MR. LEPPER: Alex has advised, for the record, that no one had a bullet around their waist?

MR. SOMERSTEIN: No, no.

MR. LEPPER: You said that. I asked you a question: Does Alex know about it or not?

MR. SOMERSTEIN: He does know about it.

MR. LEPPER: You said he didn't know about it.

MR. SOMERSTEIN: He didn't know it was part of this meeting here today. This was not in your letter.

MR. LEPPER: All right. We are trying to get to the truth, we are not winning games. Did Alex know about the laser beam? You brought it up, Steve; I didn't bring it up.

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2 MR. SOMERSTEIN: Please understand
3 what I am saying. The laser beam was not part
4 of the notice. It was not on the agenda of
5 this meeting as far as we were concerned.

6 MR. LEPPER: It is a simple question.

7 MR. SOMERSTEIN: We are going to
8 address it all. The point now is that many of
9 the things as counsel I am hearing for the
10 first time. There are many things that you
11 have raised here that were not part of your
12 notice. We had no knowledge officially of the
13 toilet paper incident, of the laser incident,
14 of the bullet bandolier incident. When you
15 first presented it in court this morning, I had
16 an image of somebody wearing bandoliers of
17 bullets around them. I didn't know it was a
18 belt this morning. I heard this morning it was
19 a belt. I have asked Alex about it, and he
20 will explain that it was a fashion statement
21 that you can buy on Canal Street. It wasn't
22 bullets; it wasn't a bandolier. There weren't
23 a bunch of banditos up there draping it. As it
24 was presented to me in court this morning, that
25 is what I thought it was.

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2 I asked Alex about it now. I learn
3 it was just a belt the kid was wearing that had
4 bullets on it. I have seen them on Canal
5 Street hundreds of times, and so have you.

6 Alex tells me, and we can talk about
7 the laser thing, I don't need time to prepare
8 about the laser thing, that it was six, seven
9 years ago, when he was a baby, practically, a
10 very young boy, 10 or 12 years old, and that it
11 came to everybody's attention when it was
12 pointed at a cop. He came up and spoke to Alex
13 about it and explained to Alex why it was not a
14 good thing to be pointing laser beams at
15 people; that it was a thing that upset people
16 because it was associated with a gun sight,
17 laser gun sight. The policeman was frightened
18 by it. He explained it to Alex.

19 Alex wasn't arrested. He was treated
20 as a child who was unaware, made a mistake,
21 there were no arrests, and Alex never did it
22 again. This is a long time ago. Those kinds
23 of allegations we can talk about.

24 We can talk about throwing this
25 toilet paper out the window. Again, this was

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2 something years ago when Alex was a kid, a very
3 young kid. Kids throw water balloons out of
4 windows, kids throw toilet paper out of
5 windows. When called on it, it never happened
6 again.

7 We have a series of childish
8 incidents that happened a long time ago, very
9 long time, that should have no bearing on this,
10 and it could only have been raised to prejudice
11 people's minds in this incident.

12 We acknowledge the BB incident is
13 serious. Of course it is serious and everybody
14 should be very concerned about it and we want
15 to address that as thoroughly as we can.
16 There's a lot we didn't know about that
17 incident until today. Alex denies it. We
18 didn't know that you had people across the
19 street who had some facts to contribute to this
20 discussion. I would like to interview those
21 people, I would like to talk to those people, I
22 would like to prepare a response to what those
23 people have to say. Alex certainly didn't know
24 about that before today.

25 MR. COLBERT: But he knows what

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2 happened in the apartment, so why not just say
3 what happened in the apartment that day? You
4 have seen in these different letters a variety
5 of different stories. You have him here. Why
6 wouldn't you have him speak to this? I am not
7 sure what preparation --

8 MR. SOMERSTEIN: Alex is prepared to
9 speak about what happened in the apartment,
10 Alex is going to tell you what happened in the
11 apartment, but I can't list the number of
12 allegations that came up through this
13 transcript, many of which I never knew about
14 before. I would like the chance to look at
15 this transcript, I would like a chance to
16 listen to the tape that the transcript is based
17 upon to see if any pressure was brought on
18 Simon, whether voices were raised. What was
19 Simon Sr. or Jr.'s demeanor, your demeanor? A
20 lot of this sounds to me --

21 MR. COLBERT: It was not --

22 MR. SOMERSTEIN: Excuse me, I didn't
23 interrupt you when you were speaking.

24 MR. COLBERT: No, you are now
25 editorializing and arguing. It is not what

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this is about. It is laying facts on the table for the Board to make a decision. This is not about a trial, it is not about cross-examination. It is about certain facts that exist. And I believe that all we are asking for you to do is to give an explanation for these things or give your version of it. If you are saying you can't do that today, then explain why.

MR. SOMERSTEIN: Facts have spin and you are putting that on facts. I think we should have the opportunity to reverse that spin as best we can.

MR. COLBERT: You made your argument. Do you want to continue with an argument?

MR. SOMERSTEIN: I would like to --

MR. COLBERT: You made your argument that you want an adjournment of the meeting at this point.

MR. SOMERSTEIN: I ask the Board for a vote on it.

MR. COLBERT: Are you prepared to proceed with what you have prepared for at this point?

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2 MR. SOMERSTEIN: I feel that to
3 adequately defend my client, I need an
4 adjournment. I ask the Board to vote on it.
5 We will step outside while they discuss it.

6 MR. COLBERT: If they agree to a
7 postponement, then you are going to come back
8 another day and present your entire matter, but
9 if they don't agree to postpone it, you are not
10 going to present anything today?

11 MR. SOMERSTEIN: I didn't say that.
12 If the Board votes against us, we would do the
13 best we can. I don't think it is fair. That's
14 it. Why don't we step out. Let them vote on
15 the adjournment request.

16 (A recess was taken.)

17 MR. LEPPER: We are back on the
18 record. The Board has not agreed to adjourn or
19 postpone the meeting at this time.

20 MR. SOMERSTEIN: Well, all right, we
21 will go ahead, then, as best we can.

22 Mr. Harvey and Ms. Wilhelm will speak
23 to how they view this incident, as serious as
24 it is, and how they have approached it and how
25 they intend to approach it within their own

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2 home and their own family.

3 They sent a letter to everybody last
4 night because they wanted you to have the
5 benefit of their thinking and their thoughts.
6 We wanted to get it to you a little earlier
7 than last night, but because of business and
8 schedules we couldn't get it out until last
9 night. We hope you all had a chance to read
10 it. It will serve in large measure to explain
11 Alex's position on many of the allegations
12 against him, so we don't have to take up your
13 time tonight reiterating that.

14 Some of the things happened. Some of
15 them are based on hearsay, speculation,
16 conclusory statements, suspicion, innuendo. I
17 would ask, as to those things that are based on
18 that kind of innuendo -- and you will be able
19 to pick it out -- not to base any decision you
20 are about to make on that kind of thing.

21 This is, as we said, a very serious
22 matter, the consequences are grave, and I would
23 ask that you act on evidence that you are
24 convinced is credible, that you are convinced
25 is true, that you are convinced is reliable.

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2 Much of this evidence is simply not
3 reliable. I would ask you to put yourselves in
4 their shoes. If you were sitting in this seat
5 and your home was in jeopardy, I am sure you
6 would expect people to insist that the evidence
7 being presented was not based on innuendo or
8 supposition or circumstance.

9 Some of these incidents that have
10 come up tonight, as we said, are old, are
11 remote in time, shouldn't be considered
12 relevant.

13 I understand this mail incident
14 happened about three or four years ago. My
15 understanding of it is that it was a childish
16 prank after a baseball game that involved a
17 snatch of three or four letters that were
18 dropped to the ground after the kids were
19 chased. The prosecutor dismissed the case
20 because they viewed it exactly that way. The
21 case was ultimately dismissed and nobody was
22 convicted, nobody was punished, and that was
23 the end of that matter.

24 Now, I don't know how much I should
25 address in my preliminary remarks about each